

Appendix C

MEPA Issue Inventory

Table of Contents:

1. General Comments
2. Comments on SJR 18
3. State Actions That Trigger or Do Not Trigger MEPA
4. Scope of the Analysis
5. Public Participation Issues/Comments
6. Timeliness of the MEPA Process Issues
7. Alternatives Issues
8. Mitigation Issues
9. Impact Analysis Issues
10. Substantive vs. Procedural Issues
11. Environmental Review Fee and Cost Issues/Comments
12. Environmental Review Document Issues Generally
13. MEPA Litigation Issues
14. Miscellaneous Issues

1. General Comments:

MEPA should emphasize common sense, reasonableness, and equity.--MCA

MEPA is so overwhelming, complicated, and frustrating that it is extremely hard to address one particular aspect of the law.--MCA

MEPA is a subjective black hole because there are so few definitions to guide the process.--MWPA

Anyone wishing to stop a proposed action can use MEPA simply as an obstructionist tool, with no intention of a "look before you leap" analysis.--MWPA

What are we intending with MEPA? MEPA reviews should not become research projects. What guidelines can be developed to ensure the intent of MEPA is met?--DEQ

Is MEPA to be looked at as the silver bullet?--DEQ

The reason MEPA exists is to assure that state agencies ultimately serve the broader public interest by requiring them to look at all the ramifications of their decisions and to involve the public in their

decisionmaking process.--AG

MEPA is a good law for a variety of reasons. Chief among these reasons is that it stimulates public participation in government decisionmaking. Another benefit of MEPA is that it facilitates informed decisionmaking and thereby better governmental actions.--MWF

The Legislature may wish to consider whether MEPA results in better government or just more expensive government.--DNRC

No one would question the good intent of the MEPA law passed in 1971. However, MEPA, after 28 years, instead of being a look before you leap law has increasingly become a way to find a reason not to leap at all.--WETA

MEPA is a process that allows better decisions to be made by state agencies which can protect the environment for current and future generations. This is an important role for state government.--MA

MEPA promotes predictability for citizens and industry. Everyone is better off when they know what rules an agency will follow to make a decision.--MA

MEPA ultimately works as a tool to guarantee that citizens are able to participate in government decisionmaking processes that impact our natural resources. It helps provide predictability for citizens and industry. MEPA is effective because it forces state agencies to consider the environmental implications of proposals before they act. For these purposes the value of MEPA is undisputable.--MEIC

MEPA protects our constitutional rights.--GYC

The MEPA process is very helpful in making a logical decision based on objective and subjective input.--MDT

2. Comments on SJR 18:

- The EQC and state agencies do not have enough overall and specific data on the quality of the environment for use in comparing whether or not MEPA is working. Funding should be sought to expand this aspect of EQC's work.--NPRC
- The EQC should widely publicize and solicit public involvement in the public hearing process.--NPRC
- The EQC should remain an advocate for strong state environmental policy.--NPRC

- Get those who legislatively proposed MEPA (the bill sponsors) to look at where MEPA has gone and determine in their minds how it has worked.--DEQ
- The Attorney General's Office supports the underlying premise of SJR 18. MEPA like all other laws should be subject to continuing and exacting review to assure that it is being implemented in the most efficient and effective manner possible and the Legislature's goals in enacting it are being met.--AG
- In any study that EQC undertakes to assess MEPA the ultimate question that must be addressed is: does MEPA accomplish what was intended by the law?--DNRC
- The EQC may want to compare Montana's environmental situation with the environmental effects occurring in states that do not possess "little NEPAs" such as Idaho.--DNRC
- If the EQC is not structured to develop such a study (effectiveness of MEPA) an entity such as PERC in Bozeman may be able to design and carry out a study of the relative benefits of MEPA.--DNRC
- EQC should identify criteria that can be periodically applied to measure the effectiveness of MEPA. This may provide the tool needed to improve MEPA over time.--DNRC
- Since this process is dealing with an important Montana Law it should be opened up to all Montana citizens, not merely those that the EQC chose to contact. Since there has been no public notice of this process, the deadline for comments should be extended and a full, fair and open public dialog of MEPA instituted which fully complies with SJR 18 (4).--FWS
- The EQC study should not address defining terms in statute as SB 413 proposed. The terms most critical to MEPA are defined in rule. Secondly, the EQC study should not address the issue raised in SB 413 concerning eliminating review of unquantified amenities.--MA, GYC
- The EQC should be extremely cautious about proposing changes in MEPA to the 2001 Legislature. But like any good thing, MEPA could stand minor improvements.--MEIC

3. State Actions That Trigger or Do Not Trigger MEPA:

- What state actions require MEPA reviews and what actions do not? Review the requirements and see if additions or eliminations need to be made.--DEQ
- Air quality State Implementation Plans (SIPs) can have adverse social and environmental effects, but we don't do MEPA reviews on SIPs.--DEQ

- Should MEPA apply to state permitting programs that are exempt from NEPA under the functional equivalence doctrine (e.g. some EPA-administered programs)?--DEQ
- Should passing laws require a MEPA analysis? Why should the legislative process be exempt?--DEQ
- Policy decisions affecting school trust lands by DNRC or the State Land Board are exempt from the requirements of MEPA. If policy decisions impact the human environment, they need to be included in MEPA or the state agency should conduct a rulemaking process that is subject to MEPA.--MWF
- Planning and Zoning:
 1. What are the expectations?
 2. Should local governments be under MEPA?
 3. Should local governments do MEPA or MEPA-like reviews?
 4. How does local zoning impact MEPA analysis.--DEQ
- C Should some or all rulemaking be exempt from MEPA?--DEQ
- C The Legislature recently exempted legislation from MEPA review, it should do the same for rulemaking.--FWP
- C An inherently difficult part of the MEPA process is determining the level of significance for a given impact. The significance criteria help in that determination, but don't fit all circumstances. Additionally, more time should be provided to determine whether an agency needs to prepare an EIS.--FWP
- C Consider eliminating MEPA analysis on classes of actions which involve minimal or relatively minor environmental consequences. Use MEPA for those truly major state actions.--MSA
- C Identify programs and policies that could avoid the requirements of MEPA analysis. Build in incentives or policies that limit the application of MEPA analysis.--MSA
- C Policy decisions that are tiered to information in MEPA documents or are implemented through site-specific MEPA projects should have to go through a MEPA process. Example: old growth policy on state lands.--FWS
- C Major projects need to be clearly defined.--WETA
- C For infrequent projects, we need to clarify when an EIS will be required, rather than an EA.--WETA

- C The EQC should annually track the statutory exemptions to MEPA that are specific in nature.--MA, MEIC, TU, GYC
- C What activities on school trust lands should be exempt from MEPA? Should policy decisions or guidelines be exempt?--MA, MEIC
- C Does DNRC do MEPA review for water rights, new water use permits, dam safety, and grant programs?--MA, MEIC, TU
- C Categorical exclusions and checklist EAs should be periodically monitored by EQC perhaps through some random auditing process.--TU, GYC
- C A definition of what constitutes material change in entitlement, thus triggering MEPA, is not provided in statute. This needs to be clarified.--GYC
- C Major policy decisions and guidelines constitute actions with potentially significant impacts on the human environment and therefore should be subject to MEPA, just as rules are subject to MEPA.--GYC
- C How are categorical exclusions to be adopted? Can they be adopted through rulemaking or only through an environmental review process?--FWP

4. Scope of the Analysis:

- C Should a state action on a small portion of a large project require analysis of the large project, e.g. should a relatively routine permit or authorization at a single point be the determining factor in a long pipeline project?--DEQ
- C If the department prepares a MEPA document on an MPDES permit application, should the scope of the analysis be limited to the impacts of the discharge or should it include the impacts of the facility being constructed?--DEQ
- C What are the limits to the scope of a study?--DEQ

5. Public Participation Issues/Comments:

- Public notice requirements of permitting create unfair and unnecessary delays.--MCA
- Lengthen the public comment period for environmental impact statements to a minimum of 60 calendar days.--NPRC

- Make public comment and involvement for environmental assessments mandatory, not discretionary.--NPRC
- Require agencies to allow participants access to the notes from scoping meetings and to correct inaccuracies.--NPRC
- Require agencies to make data on MEPA documents, processes, categorical exclusions, and decisions widely available.--NPRC
- While there may be ways to improve the process required by MEPA, I believe allowing participation by Montanans in government decisionmaking not only is an obligation we have as public servants, but also serves to help design state programs that are more responsible and more efficiently run.--Sec. of State
- I strongly believe that MEPA plays an important and crucial role in ensuring that the actions of state government are done in a public fashion, allowing the public to be informed of proposed government actions and ensuring the people of Montana an opportunity to participate in agency decisions.--Sec. of State
- Should substantive comments be more clearly defined to provide the agencies the guidance and the scope of response necessary to public comments?--DEQ
- Should the expectations of the EIS be redefined and explained to the public?--DEQ
- Are there any limits to what will and won't be available to the interested parties throughout the process?--DEQ
- Should additional guidance be established for public participation?--DEQ
- The primary emphasis in the SJR 18 study should be on how best to improve the ability of the public to be aware of and participate in agency decisionmaking.--AG
- There are no incentives in MEPA for an interested party to seek solutions through the public involvement process, because they can simply litigate if they are not satisfied with the decision.--DNRC
- Some projects receive little or no public comment. For other controversial projects the public is often frustrated with the agency because the agency lacks the statutory authority to deny a proposed action.--FWP
- The current minimum comment period of 30 days for a draft EIS and 15 days for a final EIS is too short and should be doubled.--MWF

- Newsletters which keep the public informed of the progress of MEPA alternative development and issues are very useful.--FWS
- Overall, the MEPA's public participation and evaluation of environmental effects purpose is good.--FWS
- When the Legislature sets out to limit the public's involvement in issues affecting public resources because the agencies can't follow the law properly is a problem. The problem is not with the public but with the agencies. This does not foster greater governmental accountability and it erodes citizens' confidence in the process and the agencies.--FWS
- MEPA fulfills the Montana constitution's public participation clause (Art. II, sec. 8). Additionally MEPA can help lead agencies to make decisions that guarantee our constitutional right to a clean and healthful environment (Art. IX, sec. 1).--MA, GYC
- Public comment on all EISs and EAs should be longer: 60 days for draft EIS, 30 days for FEIS, and 30 days on draft mitigated EA and 30 days on the final mitigated EA.--MA, GYC
- Short timeframes can be a problem for citizens interested in a large scale proposal. Technical information on large projects takes years for the agency and the applicant to generate, yet the public is supposed to read, understand, synthesize, and critique these enormous documents in 4 weeks. This is hardly realistic.--MEIC
- Even though agencies hold public meetings on large-scale projects, it is often the applicant who controls the meeting. This intimidates the public and stifles public comments. The agency should be the presenting entity.--MEIC, GYC
- EQC should determine how many MEPA documents in the last 10-15 years have attracted public comment. This would document the actual level of public involvement taking place.--TU
- Some citizens have expressed dissatisfaction over the open house format for public hearings on proposals. They have complained about having to go from one table to another, of having personnel associated with the applicant's company at the tables, and of feeling like the agency or company representatives are arguing with them. The problem may be in how such meetings are administered and whether other opportunities exist for issue or language clarification.--GYC

6. Timeliness of the MEPA Process Issues:

- Public notice requirements of permitting create unfair and unnecessary delays.--MCA

- Delays in MEPA implementation are often attributable to slow response time on the part of the applicant.--NPRC
- Repeal the 365-day statutory limit on completing MEPA review for Metal Mine Reclamation Act permits.--NPRC
- Some exemptions from conducting an EIS exist due to statutory time limitations. Should the use of such exemptions be reevaluated?--DEQ
- Is there an appropriate total time for complementing EAs and EISs?--DEQ
- How can timeframes be controlled?--DEQ
- Is it possible to use contract language (deadlines and penalty clauses) to help keep timeframes from slipping?--DEQ
- Government actions by their nature take time to complete. The passage of time allows opponents of an action to claim that circumstances have changed and that a supplemental document needs to be produced which is likely to be challenged as insufficient. The MEPA process becomes a continual loop without closure.--DNRC
- Legislatively establish strict timeframes for MEPA compliance including a strict statute of limitations for judicial challenges.--MSA
- Time limits that are binding should be inserted in the statute. Clear standards need to be established for an agency to take additional time that exceeds the statutory time limits.--WETA
- The current rules impose certain time limits but they do not address the primary causes of delay; absence of agency oversight over contractors, delays caused by interagency duplication, lack of coordination, and the lack of internal decisionmaking procedures.--WETA
- It would be helpful for the EQC to categorize when and where agencies are having a problem meeting timeframes.--MA
- One of the problems on bigger projects appears to be that MEPA is coupled with NEPA; whereas MEPA has a specific timeframe, NEPA does not - this makes it impossible to comply with MEPA timeframes on projects involving federal agencies. Because of this difference in obligation, ultimately no timeframes are followed on large projects carried out by state and federal agencies. Is there a solution to this?--MA, MEIC, GYC

- Are timeframes really a problem or is it the completeness of the permit application? When does completeness review end and MEPA begin? Is the timeframe to review the completeness of the permit application sufficient?--MA, MEIC, TU

7. Alternatives Issues:

- State agency personnel should not feel compelled to select an action alternative as the preferred alternative or decision rendered.--NPRC,
- State agencies should better explain their rationale when alternatives and mitigation measures are summarily dismissed on the basis of cost.--NPRC
- Should there be limits to the scope of information necessary for alternatives analysis; should it be available information or something requiring data collection; if so, are there limits to the amount/level of detail necessary?--DEQ
- In order to do a consideration of the no action alternative, do the costs and benefits work out and how far do we take nonmonetary costs? --DEQ
- Alternatives should be evaluated in light of reasonably feasible economic and technical considerations.--DEQ
- Should we have to do an alternatives analysis to resolve a conflict?--DEQ
- Should alternatives be defined by the project proponent, public, or agency or by a combination of the three? Is it appropriate for the proponent of the project to choose the alternatives versus the agency?--DEQ
- If the agency changes the rationale for the preferred alternative or changes the preferred alternative itself after draft EIS comments have been considered, do we open the EIS to allow public comment?--DEQ
- The comparison of alternatives is skewed by a timber target on state lands. The mandated 42 million board feet timber target on state lands skews alternatives that are developed in individual EAs and EISs and hobbles the decisionmaker to select an alternative on meeting the target rather than what is best for the land.

8. Mitigation Issues:

- Agencies should be required to make information on compliance with mitigation measures widely available to the public, including but not limited to distribution via the Internet.--NPRC
- Agencies should be required to implement all mitigation measures adopted in a record of decision.--NPRC
- Should there be a limit on the level of detail necessary in proposed mitigations (conceptual, preliminary, or final design)?--DEQ
- MEPA should not be a paper exercise. Proposals that are committed to in MEPA documents should really happen on the ground (mitigation, monitoring, etc.) EQC should examine ways agencies can monitor for all mitigation commitments made under MEPA. HB 346 embodies aspects of this concept.--MA, MEIC, TU, GYC

9. Impact Analysis Issues:

- FWP has not wholly considered the ramifications of (impacts on) private property rights as required by MEPA legislation during the 1995 Legislative Session.--AL
- The environmental analysis should be limited to new impacts versus existing impacts that are not subject to any state action.
- Should the scope of cumulative impacts be expanded to include reasonably foreseeable future projects?--DEQ
- The MEPA rules need to clarify the intent of the language “pre-impact study” that is currently found in the definition of “cumulative impact.”--DNRC
- At what level of detail does the public want to see the social and economic effects on property values?--DEQ
- Regulatory Restriction Analysis: Some groups say not only do you have to do an analysis on the economic impacts of proposed restrictions on the applicant, but also an analysis on the economic impacts of granting the permit on the people outside the project area.--DEQ
- Define what compensation will be for those areas affected by an action.--DEQ

- Economic and private property considerations. MEPA provides for these considerations, but most of the time they are avoided or minimally considered. EQC should consider ways to require agencies to implement previous statutory directives.--MSA
- Cumulative impacts is a key component of MEPA documents. DNRC's cumulative impact analysis is rarely complete and usually only deals with issues that beef up the timber volume.--FWS
- Cumulative impacts needs to be better defined. We believe that MEPA's cumulative impacts provision requires a review of all actions under consideration, not just those in a formal review process, and an assessment of the impacts of all such actions, not just the proposed action on the human environment.--GYC

10. Substantive vs. Procedural Issues:

- Most, if not all, of the issues identified by the alternative livestock industry concern the FWP's use of MEPA as a substantive regulatory tool.--AL
- Should the scope of the MEPA document under the sanitation and subdivisions act be limited to water quality and solid waste?--DEQ
- If it is substantive, can investigations be made only for significant impacts? If it is substantive, is mitigation of all significant impacts required?--DEQ
- It would simplify statute implementation by agencies and interpretation by the courts to have MEPA be clearly procedural.--DNRC
- The Legislature may wish to consider clarifying that MEPA does not enlarge any agency's power beyond its specific mandate.--DNRC
- A careful rewrite of MEPA should add definitions to narrow the focus of the law to consideration and disclosure of potential environmental impacts of agency actions. If an agency action might result in a violation of a substantive environmental law, it is wise to anticipate and mitigate those issues. However, MEPA should not be used to establish substantive restrictions that would otherwise be dealt with by the Legislature.--MWPA
- MEPA is a procedural statute. The statute was not intended to preclude adverse environmental impacts of a proposed action. The whole array of substantive environmental laws in Montana to provide for environmental protection.--MSA
- In Montana, agencies utilize MEPA substantively to impose stipulations, conditions, or requirements on permits, licenses, authorizations, or other approvals. Agencies utilize the

significance threshold between an EA and EIS to justify imposition of conditions or stipulations.--MSA

- Legislatively confirm that MEPA is a procedural requirement and is not a substantive environmental measure. This would eliminate certain abuses of the mitigated EA concept and clarify that what is required is the compliance with substantive environmental laws.--MSA
- Put limits on the ability of an agency to use mitigation as a way to require an applicant to take certain actions beyond what would be required by other environmental laws.--WETA

11. Environmental Review Fee and Cost Issues/Comments:

- MEPA should be changed to ensure project proponents, not taxpayers bear the full cost of MEPA.--NPRC
- It would be interesting if, as a part of the interim study, the EQC could total the amount of money spent on MEPA in a calendar year.--AL
- MEPA costs are too high for licensees.--AL
- What should define project costs for purposes of assessing EIS fees to an applicant?--AL
- While there is no doubt that MEPA compliance increases costs and at times even results in agencies having to make decisions that they would prefer not to make, those consequences are an intended and necessary part of open and accountable government.--AG
- For EISs:
 1. Presently there is not enough money to cover all EIS costs.
 2. Does the formula used for the last 20 years need to be redone?
 3. How should the fees imposed under MEPA relate to MEPA fees established in other regulatory statutes?--DEQ
- EAs are unfunded in many cases. Should applicants pay for the EA?-- DEQ
- Categories that should be explored for greater applicant funding:
 1. Should they pay for analysis?
 2. Should they pay for staff time?
 3. Should they pay for public notice?
 4. Should the fee structure be charged from start to finish?
 5. Should there be a bond required to cover the cost of the EIS? If so, what kind of bond? --DEQ

- C MEPA saves money by helping ensure that impacts are disclosed up front and ample mitigation is prescribed.--TU
- C Statutory cost recovery limitations in 75-1-202 and 75-1-203 are not high enough for large-scale mineral projects. Waivers are often needed. EQC may wish to review the premise of whether to apply a statutory maximum.--DNRC
- C MEPA is too expensive. Enormous amounts of time and money are spent on MEPA compliance.--DNRC
- C If the Legislature finds that it is appropriate for the applicant to fund the preparation of the environmental review, then the agency and applicant should determine and agree on whatever the proper cost is; an arbitrary statutory maximum serves no purpose. If, on the other hand, the Legislature finds that the state should pick up the expense, then say so in statute and provide a funding mechanism to cover it.--DNRC
- C Under 75-1-202, in order to charge an applicant fees to cover a portion of the costs of an EIS, as provided for in 75-1-203, an agency must determine within 30 days of receiving a completed application that an EIS is necessary. Yet under the MEPA rules one of the purposes of an EA is to determine the need for an EIS. These two provisions are in conflict and MEPA should be changed to allow for an EA to determine if an EIS is necessary.--FWP
- C Consider studying the cost of MEPA compliance on government and economic opportunities in Montana. How much does MEPA cost to implement? How much opportunity has MEPA cost Montana?--MSA
- C There should be constraints on the agency's ability to require an applicant to pay a disproportionate share of the cost of a project just to assure approval.--WETA
- C MEPA saves the state money because it reduces the number of lawsuits against the state because the decisions made using MEPA usually fulfill the constitutional requirement for a clean and healthful environment. MEPA also reduces private tort actions by helping prevent pollution to neighboring property. If MEPA wasn't in place, what would it cost agencies if they were to meet their constitutional obligation to a clean and healthful environment and for public participation requirements?--MA, MEIC, TU, GYC
- C There are many examples of specific ways Montana saves money because of MEPA. Environmental problems, such as abandoned mines, old landfills, and hazardous waste sites, that didn't go through MEPA are examples.--MA, MEIC, TU, GYC

- DNRC currently manages approximately 4,629,260 surface acres of school trust land. This translates into just 27 cents per acre per year for environmental protection. This seems like a reasonable cost to protect state land.--MA
- What is the cost per agency of the following: EAs, EISs, and mitigated EAs?--MA
- The cost of cleaning up degraded systems is something that needs to be assessed in evaluating the benefits of making thoughtful well-informed decisions.--GYC
- Without a comprehensive analysis of costs and timelines for MEPA review, there is absolutely no basis for declaring that MEPA requirements are the cause of time delays or cost overruns.--GYC
- Any comprehensive costs and timeline analysis should be broken down into different areas such as completeness review, collection of baseline or trend information, monitoring, document development, and public involvement. Data should include reimbursements to agencies for EIS preparation, state lands revenues from MEPA reviewed permits, costs of EAs, mitigated EAs, and categorical exclusions.--GYC
- The EQC should, over the long term, conduct periodic reviews of the timelines and costs required to complete MEPA process activities and factors affecting those timelines and costs.--GYC

12. Environmental Review Document Issues Generally:

- MEPA should be changed to establish standards for the quality of EAs and EISs.--NPRC
- Mining companies should not have the ability to black list MEPA document contractors.--NPRC
- EISs should be required to meet the most rigorous standards for academic documents.--NPRC
- EISs should contain the scientific and technical information necessary to provide the reader with an adequate working background of the material at hand. The document should also be written in plain English.--NPRC
- Information contained in other documents, such as permits already issued should be summarized in the EIS.--NPRC
- A process should be in place to correct poor quality work before a decision is rendered in order to decrease the chance that a decision will be challenged.--NPRC

- State agency personnel should disclose when scientific data, conclusions, or analysis have been changed.--NPRC
- Concurrent projects are a moving target when a project is subject to long-term analysis, resulting in an ongoing change of scope. Should the definition of concurrent actions be reevaluated?--DEQ
- EAs and EISs generally:
 1. Should there be length limits on documents?
 2. Should there be limits on the level of detail?
 3. Should there be limits on the amount of data needed for analysis?
 4. Is it appropriate for project proponents to develop an EIS or EA themselves with the agency then reviewing the document?--DEQ
- Can tiering of environmental documents be made more useful?--DEQ
- Can there be more guidelines for when to do or not to do programmatic EISs?--DEQ
- What level of engineering design standards should be used in the EIS analysis: conceptual, preliminary, or final?--DEQ
- How to deal with unavailable data? How far is an agency obligated to go?--DEQ
- Should there be more legal categorical exclusions?--DEQ
- Is there some way to define the depth of analyses needed for various aspects of the environmental reviews?--DEQ
- Should analysis requirements be different for agency-initiated projects as opposed to privately initiated projects?--DEQ
- What is the agency's responsibility to respond to new issues, new concurrent actions?--DEQ
- How can process implementation be evaluated to identify solutions for MEPA issues?--DEQ
- If the state is not going to conduct the analysis itself, the state should choose who does the analysis without any involvement of the party needing government permission.--MWF
- There are so many procedural pitfalls that we have come to the conclusion that we can't write a flawless MEPA document--that in itself indicates that MEPA is flawed.--DNRC

- MEPA procedural requirements need to be simplified and more explicit. This would provide a state agency greater assurance that their MEPA documents have met legal requirements thereby reducing costs.--DNRC
- The rules regarding programmatic impact statements are vague and don't set out what MEPA envisions. These rules need to be fleshed out.--FWP
- Establish definitions. Without statutory guidance, MEPA will continue to subject economic development actions and everyday projects to continual regulatory and/or judicial interpretations.--MSA
- Once a MEPA analysis is complete and the project or action commences, further MEPA compliance should not be required absent substantial expansions of the activity.--MSA
- Failure to conduct a proper MEPA process forecloses options. Many times the MEPA documents and processes are being used as a post hoc rationalization for a decision already made.--FWS
- Add a definition section. This would eliminate the existing range of interpretations and make sure everyone is on the same page and all know what all the words mean. This should result in less litigation.--WETA
- Often, information and data requirements for EAs can rival that for full EISs.--WETA
- The use of programmatic EAs should be utilized for more programs. This approach is in place for drilling permits issued by the Board of Oil and Gas Conservation and it is efficient and works well.--WETA
- EAs and Mitigated EAs:
 1. Who uses them?
 2. When are they used?
 3. What type of projects are they being used for?
 4. How were the checklist EAs put together? Should there be a model checklist EA?--MA, MEIC, TU
- How many MEPA documents have resulted in denial of a project?--MA, MEIC, TU, GYC
- Should there be guidance regarding the coordination and timing of multiple permits?--DEQ
- The EQC should, over the long term, monitor the use, by topic and agency, of checklist EAs, mitigated EAs, and categorical exclusions.--GYC

13. MEPA Litigation Issues:

- The important element of MEPA lawsuits is that precedent is established. There have been virtually no DNRC timber sales in the Swan State Forest since the original lawsuits of the 1980s.--MWPA
- If the public is fully involved in an agency decision from the outset, the likelihood of litigation and conflict is reduced.--AG
- Approximately one-fifth of one percent of all MEPA actions have been litigated. Based on these numbers, we are baffled how anyone can conclude MEPA produces too much litigation and therefore it must be amended.--TU
- It is reasonable to argue that a MEPA-type law could have kept the state out of court in many instances.--TU
- House Bill 142 lowers the judicial standard for state agencies in law. Agency decisions must only be supported by substantial credible evidence while the public must prove that the agency's decision was arbitrary and capricious, a much more difficult burden of proof which is patently unfair.--MWF
- HB 142 creates another stumbling block to citizens by prohibiting citizens from bringing forward evidence that was not brought up during the comment period provided by MEPA.--MWF
- The courts should recognize the potential impacts when they evaluate whether procedural error is meaningful. MEPA should provide some guidance relative to the magnitude of impacts.--DNRC
- MEPA needs a process to resolve dispute by means other than litigation. That process could result in some type of forced arbitration or a technical review panel. Another option could be a collaborative public involvement process that would eliminate any option for appeal if a party chose not to engage in the collaborative effort.--DNRC
- Statutorily provide for presumptions that an agency's analysis is complete. Without some statutory presumption that an EA or EIS is complete, litigation over what information should be considered or what data must be evaluated can be endless.--MSA
- Current law sets a clear and convincing evidence standard for parties filing for judicial review over an agency finding of no significant impact. Perhaps a similar standard should be adopted for cases filed over the adequacy of environmental impact statements.
--WETA

- A useful role for the EQC study would be to document what is going on with court cases and to seek answers to the testimony by DNRC and industries about whether or not citizens are really blindsiding agencies with new evidence.--MA
- DNRC specifically indicated during the legislative session that they lost all of the suits where citizens were allowed to bring up new evidence and that they won all the suits where new evidence was prohibited from being introduced. The EQC should analyze the following questions:
 - In each case, what new evidence was brought in, was it available to the agency before their final decision was made and why was evidence allowed in some cases but not others? Have other agencies seen this pattern?
 - How many MEPA lawsuits were thrown out because they were deemed frivolous?
 - There was much discussion on the DNRC lawsuit surrounding Middle Soup Timber Sale. On this lawsuit what was the basis for the court's finding three times on the side of citizens (and against DNRC)?
 - Are certain agencies more subject to lawsuit challenges than others? Is there a pattern on why this happens? Could training of agency personnel reduce the number of lawsuit challenges?--MA, MEIC, GYC
- C The EQC should track all MEPA lawsuits on an annual basis.--MA
- C Before HB 142, did courts remand information back to agencies? If this did occur, what was the result?--MEIC, GYC
- C How did the court interpret the phrase "material change" that is now included in law because of HB 142? Does this simply codify the Ravalli County decision?--MEIC
- C New information should not be restricted in lawsuits. Agencies should not act on incomplete information and analysis, thus potentially putting public health and resources at risk.--GYC
- C We believe that anyone who comments during the MEPA process, including anyone who has expressed recreational, resource, public health, or noneconomic interests, must have standing to challenge the final decision in court.--GYC
- C EQC should monitor over the long term the characterization of MEPA lawsuits and lawsuit outcomes.--GYC
- C There should be a statute of limitations of 1 year or so after the ROD.--MDT

14. Miscellaneous Issues:

- Clean up the codes. The regulated community and the public should be able to look to one location for all statutory language related to MEPA.--NPRC
- Repeal House Bill 142.--NPRC, GYC
- Senate Bill 413 should be used as a framework to discuss what is wrong with MEPA.--MWPA
- MEPA has not hurt or made it more difficult for the Land Board to serve the trusts.--Sec. of State
- Are quarterly reports to the EQC really necessary since all EAs and EISs are sent to the Council?--DEQ
- Department of Livestock follows less stringent MEPA rules than other agencies that results in much less thorough analysis. DOL needs to adopt the model MEPA rules.--MWF
- MEPA allows multiple state agencies to inject themselves into another program's decision area through inclusion of indirect impacts.--DNRC
- One of the barriers to effective MEPA implementation is knowledge and experience with the requirements and process. With new employees and people who are changing jobs there is always a need for MEPA training. The EQC should consider conducting MEPA training, possibly through the Professional Development Center.--FWP, GYC
- Why hasn't DOL adopted the 1988 MEPA rules? What are the major differences between DOL rules and the 1988 rules?--MA, GYC
- State regulators should not be project proponents, this should be the role of the project consultants. If the project is inadequate, incomplete, or inappropriate, the agency should deny it, not suggest ways for improvements. The state does not have the resources to act as a company's private consultant on large scale projects.--MEIC
- Consultants:
 - If the state disagrees with a private consultants research it should state clearly what information it disagrees with and why.
 - Agencies should publically list consultants they use for MEPA compliance including where the consultants are located and the number of MEPA contracts received on an annual basis.

- Agencies should provide a list of those MEPA documents done externally and those internally.--MEIC, TU, GYC
- C It became clear in the EQC's enforcement and compliance study that agencies cannot tell the public whether the condition of the natural resources they are responsible for protecting are improving or declining in health and productivity. MEPA's impact analysis is impaired without this basic analysis. Better trend analysis is need. Because EQC has the statutory responsibility to monitor environmental trends across the state, it is up to the appropriate entity to ensure that such indicators are developed.--GYC
- C There has been an absence of any direct authority to adopt rules, yet, all agencies have done so. This is a concern.--MDT